

GAHC010100932022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./311/2022

RABEN MEDHI
S/O. LT. NIRANJAN MEDHI, VILL. HATINAPUR, MOUZA HASTINAPUR, P.S.
PATACHARKUCHI, DIST. BARPETA, ASSAM.

VERSUS

SMT. BHANITA MEDHI
W/O. RABEN MEDHI, D/O. MADHAB THAKURIA, VILL. BHUGMPUR
(DAFALA) MOUZA UTTAR BAJALI, P.S. PATACHARKUCHI, DIST. BARPETA,
ASSAM, PIN-781325.

Advocate for the Petitioner : MR. S BORA

Advocate for the Respondent : MR A N AHMED

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

11.05.2023

Heard Mr S Bora, learned counsel appearing for the petitioner and Mr B B Gogoi, learned Additional Public Prosecutor for the State of Assam.

2. The petitioner has preferred an application under Section 401 CrPC, read with Section 397 CrPC, against the impugned order dated 27.04.2022, passed by the learned JMFC, Bajali, in MR Case No. 26/2017, whereby the learned Magistrate has rejected the petition of the petitioner to adduce evidence.

3. The respondent, being the wife of the petitioner filed a case before the learned

JMFC, Bajali, under Section 125 CrPC, claiming maintenance from her husband, i.e., the petitioner of the case. The case was fixed for argument on 08.03.2022. On that day, the petitioner being the second party, filed a petition before the Court of learned JMFC, Bajali, being Petition No. 427 of 2022, seeking examination of two persons as witnesses in support of his case. But learned Magistrate after hearing both sides on 27.04.2022, rejected the said petition and fixed the next date for argument.

4. Learned counsel for the petitioner has submitted that rejection of the petition by the learned JMFC, Bajali, has deprived the petitioner from adducing defence evidence and has caused great prejudice to the petitioner, which amounts to denial of legitimate legal right to the petitioner. Hence, the impugned order dated 27.04.2022 passed by the learned JMFC is bad in law, illegal and liable to be set aside

4. On the other hand, the learned counsel for the respondent has submitted that the petitioner took several adjournments for producing his defence witness and the Court has given sufficient opportunity to the petitioner to adduce evidence in support of his case. As the petitioner has failed to adduce his evidence, the defence evidence was closed. There was no illegality or perversity in passing the order by the Magistrate. The learned Magistrate has rightly passed the order, which calls for no interference by this Court.

5. I have heard the submissions made by the learned counsel for both the parties.

6. I have gone through the order of the learned Magistrate, dated 27.04.2022, which is reproduced as below:-

“After going through the submissions made by both the parties and also going through the relevant provisions of law and also on perusal of the CR, it is observed that vide order dated 09.05.2019, one more chance was given to the petitioner to produce his witnesses, however, on 19.06.2019, the petitioner/2nd party was absent with steps and then again vide order dated 17.07.2019, the petitioner/2nd party again filed a petition

for absence and on that day my Learned Predecessor barred the petitioner/2nd party from giving evidence and producing his witnesses and thereby proceeded with this case. Now, the 2nd party/petitioner has filed this petition on 08.03.2022, that is after 966 days (including the date of filing the petition) from the date of being barred to adduce any evidence and it is imperative to mention here that the 2nd party/petitioner had ample opportunities to file the petition beforehand but a delay of 966 days was made in filing the same and no cause, whatsoever, has been shown in the said petition by the petitioner. It is also observed that the case is a maintenance case U/S 125 of Cr.PC and it is almost at the final stage of trial. Hence, considering all and on the basis of the reasons shown above I deem it fit to reject the petition bearing No. 427/22 and the case is accordingly proceeded with.”

7. Though I do not find any illegality in passing the order by the learned Magistrate, however, learned counsel for the petitioner has assured that one last chance may be given to the petitioner to adduce evidence and on this count, the learned counsel for the respondent also agreed to the proposal of the petitioner that one more chance may be given to the petitioner to adduce evidence in support of his case.

8. Considering the submissions made by the learned counsel for the parties and for the ends of justice, the prayer of the petitioner is allowed with a condition that the petitioner will appear before the learned trial Court on 25.05.2023, along with his witness, if any. If the petitioner fails to produce any witness on the date fixed, the Magistrate is at liberty to pass appropriate order(s) to that effect.

9. With the aforesaid directions and observations, this Criminal Revision Petition stands disposed of.

JUDGE

Comparing Assistant